

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3955 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

LAKIBHAI @ MOHAMMAED YUSUFBHAI AHMEDBHAI SHEIKH

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for MR MM TIRMIZI for Petitioner
MR RM CHAUHAN, AGP for Respondent No.1, 2 and 3
MR SUNIL C PATEL for Respondent No. 4

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 31/07/97

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 20/3/1997 passed by the respondent no.2 being the District Magistrate, u/S. 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short

'PBM Act').

2. The grounds on which the impugned order of detention has been passed appear at Annexure-B. The synopsis of the grounds supplied to this Court inter-alia indicates that the petitioner is engaged in a firm in the name and style of "J.R. Trading Company" carrying on business of free sale of kerosene. On 20/2/1997 PSI, District Traffic, Ahmedabad Rural intercepted one tempo bearing no. GJ-1-V-Y-4149 on suspicion. Mr. Jummanbhai Bhurabhai Shaikh's statement was recorded and stock of 660 ltrs. of kerosene contained in 3 barrels loaded in the tempo was taken to Sarkhej Police Station. Aforesaid statement recorded by the police would indicate that the said stock of kerosene was loaded from the aforesaid firm of M/s. J.R. Trading Company under a stock bill no. 110. One Nadeembhai, the driver of the tempo, stated before the police that the said stock of kerosene was loaded by Mr. Jummanbhai on 19/2/1997 under the aforesaid bill. One Mr. Babukhan, owner of the tempo, in his statement dated 24/2/1997 stated that the kerosene was sold by Mr. Jummanbhai under the aforesaid bill of M/s. J.R. Trading Company.

3. Police Department informed the concerned Department about the seizure of the stock of kerosene as stated above. During the course of investigation the tempo driver further stated that the stock of 660 ltrs. of blue kerosene was loaded on his tempo on 19/2/1997 by Mr. Jummanbhai in presence of the petitioner and the bill no. 110 of M/s. J.R. Trading Company was issued. In that bill one Laxmanbhai Mawawala of village Kesaradi has been shown as the purchaser. Said driver Nadeembhai identified Mr. Jummanbhai in presence of the Panchas.

4. The petitioner was not traced at his residence and hence notice dated 21/2/1997 was issued by City Mamlatdar directing him to remain present. The process was repeated on 25/2/1997, but his residence was found closed and hence, notice was affixed on the door of the house in presence of Panchas. The petitioner, however, did not remain present till date and has been stated to be absconding. It has been alleged that the petitioner's conduct shows that he has been abetting Mr. Jummanbhai in the kerosene distribution system. Mr. Jummanbhai, however, denied the allegations of having loaded the said stock of kerosene as well as having issued the bill as aforesaid. He has also denied the allegations with regard to carrying on business in blue kerosene. It is alleged that he has accordingly denied the real fact with a view to conceal his conspiracy with the

petitioner.

5. Aforesaid Nadeembhai, the driver of the tempo stated that he was knowing Laxmanbhai of village Kesaradi. According to him Laxmanbhai wanted kerosene and, therefore, he asked to get 3 barrel of kerosene if it was available near Sarkhej. Hence, driver Nadeembhai informed petitioner and Jummanbhai about the requirement of 3 barrel of kerosene. It is alleged that the petitioner and Jummanbhai informed that the kerosene was available and he (the driver) should reach Sarkhej crossing along with the tempo. The driver, therefore, reached aforesaid M/s. J.R. Trading Company at Sarkhej and Mr. Jummanbhai supplied 3 barrels of kerosene in presence of the petitioner as stated above under the bill no. 110 prepared in the name of Laxmanbhai Mawawala. Mr. Jummanbhai accordingly received Rs.6600/- in cash as alleged by the driver.

6. From the aforesaid facts it has been asserted in the grounds of detention that the petitioner abetted the sale of blue coloured kerosene, the analysis whereof as particularised in the grounds of detention reveal that such kerosene was meant for the card holders of the weaker sections as per the public distribution system announced by the Government and that it could not be sold without permit and further that Mr. Jummanbhai did not hold any permit to sell such blue kerosene. Hence, Mr. Jummanbhai alongwith the petitioner illegally obtained stock of kerosene and sold at higher profit and committed serious irregularities of encouraging profiteering and black marketing thereby depriving the needful card holders for having the stock of kerosene.

7. The petitioner accordingly met with the impugned order of detention and has been under detention thereunder.

8. The impugned order of detention has been challenged on number of grounds inter-alia on the ground appearing in ground (u) at page 16. The said ground reads as under :-

"(u) The petitioner respectfully submits that it is stated in the grounds of detention that one tempo bearing no. GJ-1-V-Y-4149 was intercepted by the police on 20/2/1997 and from that tempo 660 ltrs. of kerosene was found. On interrogation it was found that the said stock was loaded in the said tempo by the petitioner's partner and on that basis the impugned order

which is at ANNEXURE 'A' has been passed. That on the very next day i.e. on 21/2/1997 the present petitioner had made a representation to the present respondent no.2 wherein all the circumstances have been explained by the petitioner. That the petitioner has stated in the representation dtd. 21/2/1997 that the subject bill was a forged and fabricated document produced by the persons who had committed the offence. It is also stated in the said representation that a criminal complaint has also been filed against the said accused Nadeem for the offence u/S. 420, 467 I.P.C. This representation was sent much prior to the respondent no.2, however, the same has not been considered. The said representation dtd. 21/2/1997 is already annexed as ANNEXURE-'D' to this petition.

It is submitted that the said representation was before the detaining authority before the passing of the detention order against the petitioner and, therefore, it was necessary for the detaining authority to consider the same as the same is a vital document which has bearing upon the detention of the petitioner. It is submitted that each and every vital material which has bearing upon the detention of a person must be considered by the detaining authority as it may tilt the balance of the detaining authority either way. Non-consideration of such document vitiates the subjective satisfaction of the detaining authority. In the present case the representation dated 21/2/1997 is a vital and material document for the purpose of passing the detention order and consideration of which could have tilted the balance of the detaining authority either to pass the order of detention or not against the petitioner and, therefore, non-consideration of the said representation dated 21/2/97 vitiates the subjective satisfaction of the detaining authority."

9. The case with regard to the complaint dated 20/2/1997 and the representation dated 21/2/1997 was also set up by aforesaid Mr. Jummanbhai, who challenged his detention in Special Civil Application No. 2606 of 1997 and it was found that the representation dated 21/2/1997 would be the most relevant and vital document which merited consideration of the detaining authority. There has been no affidavit in reply with regard to

consideration of this document by the detaining authority. It appears that the document was very much before the detaining authority. Even the copy of this document has been supplied as late as by six days.

10. In the background of the aforesaid facts concerning the aforesaid ground of challenge against the impugned order of detention reliance has been placed upon a decision of this Court dated 14/2/1997 in Special Civil Application No. 8561 of 1996 between Dharmendrakumar Natwarlal Patel and State of Gujarat and others referring to a Division Bench judgment in the case of Lataben R. Uttekar v. The Commissioner of Police reported in 1995 (1) G.L.H. 347, Ashadevi v. K. Shivraj reported in AIR 1979 SC 447, Khudiram Das v. State of West Bengal reported in AIR 1975 SC 550 and M. Ahamedkutty v. Union of India reported in (1990) 2 S.C.C. p.1. This Court held that a relevant and vital document (material) has to be considered by the detaining authority for his subjective satisfaction and having considered such relevant material, copy thereof has to be supplied to the detenu. Reference in this connection has also been made to a decision in the case of Ayya alias Ayub v. State of U.P. reported in AIR 1989 S.C. 364 (see para.13 of the citation). In the present case the detaining authority does not appear to have considered the aforesaid document and even after representation as aforesaid copy of the earlier representation dated 21/2/1997 was supplied after a passage of 6/7 days. It would thus clearly appear that there is non application of mind on the part of the detaining authority to vital and relevant document and in any event right of the detenu in making effective representation at the earliest point of time as envisaged by Article 22(5) of the Constitution of India would be defeated. In that view of the matter, atleast the continued detention of the petitioner would be violated.

11. The result is that the continued detention of the petitioner under the impugned order of detention will have to be snapped by holding the same illegal.

12. The petitioner has challenged the impugned order of detention and his continued detention on other grounds also. But since the petitioner succeeds in this petition on the aforesaid ground, it would not be necessary to deal with the other grounds.

13. In the result, this petition is allowed. The continued detention of the petitioner - Lakibhai alias Mohammed Yusufbhai Ahmedbhai Shaikh under the impugned

order of detention is directed to be put to an end and the petitioner shall be released immediately, if not required to be detained in any other case. Rule made absolute in the aforesaid terms.

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